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County of San Diego

CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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REGULAR MEETING AGENDA

TUESDAY, FEBRUARY 8, 2011, 5:30 P.M.

San Diego County Administration Center

1600 Pacific Highway, Room 302/303, San Diego, 92101

The public portion of the meeting must be concluded in time to allow the public to vacate the building by 6:00 p.m.
(Free parking is available on the street or pay Ace Parking on the south side. Enter at the north entrance.)

Pursuant to Government Code Section 54954.2 the Citizens' Law Enforcement Review Board will conduct a meeting at the above time and place for the purpose of transacting or discussing business as identified on this agenda. Complainants, subject officers, representatives or any member of the public wishing to address the Board on any of today's agenda items should submit a "Request to Speak" form to the Administrative Secretary prior to the commencement of the meeting.

DISABLED ACCESS TO MEETING

A request for a disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting. Any such request must be made to Ana Becker at (619) 238-6776 at least 24 hours before the meeting.

1. ROLL CALL

2. MINUTES APPROVAL

- a) Minutes of the January 2011 Regular Meeting (*Attachment A*)

3. PRESENTATION / TRAINING

- a) Search & Seizure: Stops, Detentions, and Pat-Downs

4. EXECUTIVE OFFICER'S REPORT

- a) Workload Report - Open Complaints/Investigations Report (*Attachment B*)

5. NEW BUSINESS

- a) N/A

6. UNFINISHED BUSINESS

- a) Election of 2011 Board Officers

7. PUBLIC COMMENTS

This is an opportunity for members of the public to address the Board on any subject matter that is within the Board's jurisdiction. Each speaker should complete and submit a "Request to Speak" form to the Administrative Secretary. Each speaker will be limited to three minutes.

8. CLOSED SESSION

- a) **Discussion & Consideration of Complaints & Reports:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session).

DEFINITION OF FINDINGS	
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Action Justified	The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

CASES FOR SUMMARY HEARING (5)

ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE

08-012

1. Death Investigation/Positional Restraint – Deputies extracted Jeffrey Dewall from a sobering cell and placed him into a Pro-strait chair where he became unresponsive and stopped breathing.

Recommended Finding: Not Sustained

Rationale: As reported, the use of force in subduing and restraining the decedent appeared to comply with policy. Videotape evidence indicated Dewall was handcuffed behind his back, bent forward in a seated position with his head touching his knees, as deputies applied body weight for several minutes. He subsequently died of brain damage due to lack of oxygen. There was no complaint of misconduct in this case.

10-003

1. False Arrest – Deputy 1 arrested the complainant as she was stopped at a red light and speaking to Kaiser Hospital on a speaker phone.

Recommended Finding: Not Sustained

Rationale: Deputy 1 said the complainant was never under arrest. He detained the complainant in his patrol vehicle after she refused to sign a citation. The complainant who was cited for VC§ 23123, Use of Cell Phone, said she contacted Kaiser Hospital (calls made to medical professionals are an exception to this law) and used the speaker component of her phone but denied that it ever touched her ear and/or face. Deputy 1 stated he

observed the complainant with the cell phone to her ear while moving in traffic. The complainant did not provide her cell phone and/or phone records to document the specific type of device utilized and/or the call made at the time in question. There is insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Procedure – Deputy 1 took the complainant into custody for not signing a traffic citation without explaining the process.

Recommended Finding: Not Sustained

Rationale: Deputy 1 said the complainant was never under arrest and only detained in his patrol vehicle after she refused to sign a citation for VC§ 23123, Use of Cell Phone. Refusal to sign a citation is a violation of VC§ 40302, Mandatory Appearance. Deputy 1 is legally justified to arrest a violator for refusal to sign a citation. However, there is dispute by both parties over the explanations given regarding this process and insufficient evidence to either prove or disprove the explanation of process.

3. Excessive Force – Deputy 1 “snatched” the complainant from her vehicle, twisted her arms behind her back, and pushed her head up against the top of her car.

Recommended Finding: Not Sustained

Rationale: Again, there is dispute over the actions that occurred by both parties and no further witnesses and/or evidence that has been brought forth to support either side. Due to insufficient evidence, we were unable to prove or disprove this allegation.

4. Misconduct/Discourtesy – Deputy 1 said to the complainant, Yeah, you want some drama, I got some fucking drama for you. We’ll see how you like going to jail, since you want some fucking drama.”

Recommended Finding: Not Sustained

Rationale: Profanity is a violation of Sheriff’s Policy & Procedure 2.22, Courtesy. Deputy 1 denied making these statements. Without further evidence, we are unable to prove or disprove this allegation.

10-005

1. False Arrest – Deputies 1 and/or 2 detained a minor when he requested assistance after becoming lost and/or stranded.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers’ Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. Excessive Force – Deputies 1 and/or 2 handcuffed and beat a minor resulting in head injuries.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Misconduct/Procedure - Deputies 1 and 2 ripped off and shredded a minor’s clothing.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Misconduct/Procedure - Deputies 1, 2, and/or other unidentified officers refused to contact a minor’s parents per his request.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

5. Misconduct/Procedure – Deputy 3 refused to contact a minor’s parents per his request.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

6. Misconduct/Procedure – The Sheriff’s Department will not provide the aggrieved with basic information concerning this incident.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

10-006

1. Misconduct/Intimidation - Deputy 1 threatened to cite the complainant for littering, without cause.

Recommended Finding: Not Sustained

Rationale: Deputy 1 contacted the complainant related to the law of littering cigarettes on the ground. (VC 23111) A witness to this incident who was within earshot of their conversation, only heard Deputy 1 explain the infraction of which the complainant was possibly guilty. There is insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Intimidation - Deputy 1 threatened to arrest the complaint for being drunk in public, without cause.

Recommended Finding: Not Sustained.

Rationale: Deputy 1 and the complainant offered conflicting information about the drunk in public statement. The complainant was not cited or arrested and returned to the venue. There is insufficient evidence to either prove or disprove the allegation.

3. Misconduct/Intimidation - Deputy 1 said of the complainant, “I’m going to get that motherfucker.”

Recommended Finding: Not Sustained

Rationale: Deputy 1 denies making this statement or that he would say that to any member of the public. There are conflicting accounts as to whether or not Deputy 1 made this statement. There is insufficient evidence to either prove or disprove the allegation.

4. Misconduct/Discourtesy - Deputy 1 called the complainant a “cocky fucker.”

Recommended Finding: Not Sustained

Rationale: Deputy 1 denies making this statement, and available witnesses on the scene deny hearing Deputy 1 make this statement. Witnesses for the complainant have been unavailable, leaving the complainant without any corroborating testimony. There is insufficient evidence to prove or disprove this allegation.

5. Misconduct/Discourtesy - Deputy 1 told the complainant to “take his fucking ass away from him.”

Recommended Finding: Not Sustained

Rationale: Deputy 1 denies making this statement, and available witnesses on the scene deny hearing Deputy 1 make this statement. Witnesses for the complainant have been unavailable, leaving the complainant without any corroborating testimony. There is insufficient evidence to prove or disprove this allegation.

6. Misconduct/Procedure - Deputy 1 refused to give his name and identification number when asked.

Recommended Finding: Not Sustained

Rationale: Deputy 1 and a witness deputy deny that Deputy 1 refused to give his name and badge number to the complainant. There is insufficient evidence to prove or disprove this allegation

7. Misconduct/Discourtesy - Deputy 1 stated, "I don't have to give you shit; get the fuck out of here before I take you in."

Recommended Finding: Not Sustained

Rationale: Deputy 1 denies making this statement. There are no independent witnesses to corroborate Deputy 1 or the complainant's statements therefore, there is insufficient evidence to prove or disprove this allegation.

11-005

1. On January 12, 2011, CLERB received a signed complaint alleging unidentified police officers to include San Diego Police, San Diego State University Police and Mesa College Police Departments are "cell phone tracking."

Recommended Finding: Summary Dismissal

Rationale: CLERB does not have authority to investigate this complaint based upon the following Rules & Regulations: Section 4: Authority, Jurisdiction, Duties and Responsibilities of Review Board. The Review Board lacks jurisdiction.